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FILED

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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2003

HAROLD E. ANDERSON,

Petitioner,

v.

EDDIE L. PEARSON, *et al.*,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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May 10, 2004

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QUESTION PRESENTED

Where, under *Spencer v. Kemna*, 523 U.S. 1 (1998), a former prisoner files a 42 U.S.C. § 1983 claim challenging prison discipline--and under *Edwards v. Balisok*, 520 U.S. 641 (1997), and *Heck v. Humphrey*, 512 U.S. 477 (1994), the claim could not have been filed before the prisoner's release--can the statute of limitations be held to have started running before the release occurred?

LIST OF PARTIES

The parties to the proceeding in the court whose judgment is sought to be reviewed were Harold E. Anderson, Eddie L. Pearson, Larry Huffman, and Gene Johnson.

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OPINIONS AND ORDERS

There are no official reports of the opinions and orders entered in the case. The opinion of the court of appeals is unofficially reported at 2004 U.S. App. LEXIS 2452. Petitioner is aware of no unofficial reports of the district court's opinion or order.

JURISDICTION

The judgment sought to be reviewed was entered February 13, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. 14 (excerpt)

Section 1. . . . No state shall . . . deprive any person of . . . liberty . . . without due process of law.

42 U.S.C. §1983 (excerpt)

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of a State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

Anderson's complaint under 42 U.S.C. § 1983 alleged that Virginia prison officials denied him due process by imposing, without "some evidence," *Superintendent, Mass. Correctional Inst., Walpole v. Hill*, 472 U.S. 445 (1985), prison discipline that increased his sentence. *Anderson v. Pearson*, Civil Action No. 7:02-cv-01292 (W.D. Va. Amended Final Order July 29, 2003), Complaint ¶ 7.[1] The district court had jurisdiction under 28 U.S.C. § 1331.

Anderson alleged that he was released from prison while his state court challenge to the discipline was pending, and that the state court later dismissed his case for lack of jurisdiction. Complaint ¶ 8. Anderson filed his district court complaint within two years of his release. App. 4a, 9a. The district court held Anderson's claim barred by Virginia's two-year statute of limitations. App. 9a. The court held the statute began to run "from the moment [Anderson's] disciplinary conviction [was] final, excluding the time [spent] litigating a habeas petition." App. 8a. The court of appeals agreed. App. 2a.

ARGUMENT

The start of the statute of limitations on a claim allowed by *Spencer v. Kemna*, 523 U.S. 1 (1998), is an important question which the Court should resolve. The decision below is incompatible with the Court's reasoning in *Heck v. Humphrey*, 512 U.S. 477 (1994), and contrary to the views expressed by other lower courts.

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[1] Anderson alleged that prison officials found him guilty of rioting based solely on evidence that he had been struck by bullets fired toward the rioters, though officials knew bullets had hit distant walls behind the rioters, where innocent persons including Anderson were standing. Complaint ¶¶ 5-6

In *Heck*, the Court said the statute of limitations on a § 1983 claim challenging the fact or duration of prison confinement does not start to run until the imprisonment has been invalidated by state action or grant of federal habeas corpus relief. The Court said "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated" and "the statute of limitations poses no difficulty while the state challenges are being pursued, since the § 1983 claim has not yet arisen." 512 U.S. at 489-90. The Court expressly rejected the approach adopted by the courts below, which would start the statute of limitations running earlier but apply "a federal doctrine of equitable tolling . . . while state challenges [are] exhausted." 512 U.S. at 489.

In *Edwards v. Balisok*, 520 U.S. 641 (1997), the Court held that *Heck* applies to § 1983 claims which, like Anderson's, challenge prison discipline that lengthened confinement. In *Spencer v. Kemna*, 523 U.S. 1 (1998), five members of the Court said that because release from prison renders federal habeas corpus relief moot, a former prisoner whose claim of unconstitutional imprisonment was not decided before his release may seek equitable relief and damages under § 1983. 523 U.S. at 21 (Souter, J., joined by O'Connor, Ginsburg, and Breyer, JJ., concurring) ("former prisoner . . . may bring a § 1983 action establishing the unconstitutionality of a . . . confinement without being bound to satisfy a favorable-termination requirement; . . . the answer to [the] argument that [a] habeas claim cannot be moot because *Heck* bars him from relief under § 1983 is that *Heck* has no such effect"); *id.* at 25 n.8 (Stevens, J., dissenting) ("Given the Court's holding that [a released prisoner] does not have a remedy under the

habeas statute, it is perfectly clear, as Justice Souter explains, that he may bring an action under § 1983").

Because Anderson's § 1983 claim arose upon his release, and could not have been filed before, the statute of limitations started running on the day he was released. *Heck*, 512 U.S. at 489-90. *See Guerrero v. Gates*, 110 F. Supp. 2d 1287, 1290-91 (C.D. Cal. 2000) ("cases have left open the question of when a § 1983 claim accrues where judgment in favor of the plaintiff on the claim would necessarily imply the invalidity of his conviction but the plaintiff is no longer in custody; [i]t is apparent, however, that the earliest date such a claim could accrue is the date of the plaintiff's release from custody"); *Shamaeizadeh v. Cunigan*, 182 F.3d 391, 396 n.3 (6th Cir. 1999) (where former prisoner challenges imprisonment under § 1983, statute of limitations "[a]pparently . . . would begin to run when the plaintiff . . . satisfied his term of imprisonment"). Anderson's complaint, filed within two years of his release, was timely under Virginia's two-year statute of limitations.

The courts below erroneously reasoned that their contrary approach was proper because it would bar the claims of released prisoners who failed timely to seek to exhaust other remedies. App. 7a-8a. Failure to exhaust other remedies is not a bar to a non-incarcerated plaintiff's claim under § 1983. *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982). *See Heck*, 512 U.S. at 489 (declining to "engraft an exhaustion requirement upon § 1983").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 10, 2004

APPENDIX

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 03-7287

HAROLD E. ANDERSON,

Plaintiff-Appellant,

versus

EDDIE PEARSON, in his individual capacity; LARRY HUFFMAN, Regional Director, Virginia Department of Corrections; GENE JOHNSON, Director, Virginia Department of Corrections,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Senior District Judge. (CA-02-1292-7)

Submitted: January 30, 2004 Decided: February 13, 2004

Before WILLIAMS, MOTZ, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Daniel M. Schember, GAFFNEY & SCHEMBER, P. C., Washington, D. C., for Appellant. Jerry W. Kilgore, Attorney General, Mark R. Davis, Senior Assistant Attorney General, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Harold E. Anderson appeals the district court's order denying relief on his 42 U.S.C. § 1983 (2000) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Anderson v. Pearson, No. CA-02-1292-7 (W.D. Va. July 21, 2003). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

HAROLD E. ANDERSON	)	
	)	
Plaintiff,	)	Civil Action No.
	)	7:02CV01292
v.	)	MEMORANDUM
	)	OPINION
EDDIE L. PEARSON, et al.,	)	By: Hon. James C.
	)	Turk, Senior United
Defendant(s).	)	States District Judge

Plaintiff Harold E. Anderson, a former inmate of the Buckingham Correctional Center, filed a complaint against the Defendants, Warden Eddie L. Pearson, Regional Director Larry Huffman, and Director Gene Johnson. Plaintiff has filed suit against Defendants Pearson and Huffman in their individual capacities for violating his constitutional Due Process rights under 42 U.S.C. § 1983 for monetary damages, and is suing Director Johnson in his official capacity for equitable relief. Defendants have filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Without consideration of the merits of the case, the Court dismisses this action because it is barred by the applicable statute of limitations.

I

Plaintiff's Complaint alleges, and the Defendants' Motion to Dismiss confirms that, on December 26, 1996, Plaintiff was struck by a bullet fragment that was fired by a corrections officer over the heads of riotous inmates at the Buckingham Correctional Center. Plaintiff was subsequently disciplined with the loss of 90 days good

conduct time for allegedly participating in the riot. Plaintiff claims that he was not involved in the rioting and was standing far away from the riot. It is evident that the injury that Plaintiff suffered weighed heavily against him in the disciplinary proceedings because prison officials concluded that since he had been struck by a bullet he must have been involved in the riot. Throughout his administrative appeals[1], Plaintiff submitted evidence disputing his participation in the riot. Plaintiff claims that the finding that he participated in the riot is unsupportable under Virginia Department of Prison Regulations that require a "fair decision" based upon "some evidence."[2] Defendant Pearson denied Plaintiff's appeal on February 13, 1997; Defendant Huffman denied the subsequent appeal on August 20, 1997.

On June 18, 1999, Plaintiff filed for habeas corpus relief from the Virginia Circuit Court for Buckingham County. Plaintiff's Petition, Anderson v. Warden Buckingham Correctional Ctr., No. CL 99-40 (Cir. Ct. Buckingham County, Va., filed June 18, 1999). While the petition was pending, Plaintiff was released from prison on January 2, 2001. (On July 25, 2001 the petition was dismissed for lack of jurisdiction. The court ruled that the Roanoke City Circuit Court had exclusive jurisdiction because it had imposed the Plaintiff's original criminal sentence. The questions before this Court are (1) whether Plaintiff states a cognizable claim under 42 U.S.C. § 1983 for injunctive relief expunging his disciplinary conviction and for monetary damages for the loss of his good conduct

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[1] The Plaintiff's first appeal was to Defendant Pearson; the subsequent and final appeal was to Defendant Huffman.

[2] Plaintiff's Complaint refers the Court to Department Operating Procedure (DOP) 861.

time, and (20 how the appropriate statute of limitations applies.

II

Plaintiff concedes that habeas corpus is the exclusive cause of action for an incarcerated prisoner seeking to challenge a disciplinary conviction that increases time served.[3] However, because Plaintiff has been released from prison, he can no longer file a habeas petition. Thus, plaintiff contends that his constitutional challenge is cognizable under 42 U.S.C. § 1983.[4]

Normally, a plaintiff must overturn his disciplinary conviction by way of habeas corpus before he may file a § 1983 action against prison officials. See Edwards v. Balisok, 520 U.S. 641, 117 S. Ct. 1584, 137 L. Ed.2d 906 (1997); Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed.2d 383 (1994). However, the Plaintiff argues that five Justices of the Supreme Court have made an exception to this requirement for any inmate who files a habeas petition while incarcerated but is unable to litigate the case due to factors beyond his control, such as his release from prison. Assuming without deciding that the

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[3] The federal habeas corpus statute, 28 U.S.C. § 2254(b), prevents a federal court from awarding habeas relief unless state courts are first given the opportunity to hear the petitioner's claims. In contrast, § 1983 contains no such provision.

[4] Plaintiff cites support for this position from Justice Souter' concurring opinions in Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L Ed.2d 383 (1994), and Spencer v. Kemna, 523 U.S. 1, 21, 118 S. Ct. 978, 990, 140 L. Ed.2d 43 (1998) ("The better view, then, is that a former prisoner, no longer 'in custody,' may bring a § 1983 action establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy.").

plaintiff's claim is thus appropriate under § 1983, the statute of limitations for a § 1983 claim would appear to have run on August 20, 1999, two years after cause of action arose. Wilson v. Garcia, 471 U.S. 261, 276, 105 S. Ct. 1938, 1947, 85 L. Ed.2d 254 (1985) (holding that the statute of limitations for all § 1983 claims is borrowed from state law statute of limitations for personal injury torts); Shelton v. Angelone, 148 F. Supp.2d 670, 677 (W.D. Va. 2001) (Turk, J.) (construing Va. Code Ann. § 8.01-243(A)); see also Nasim v. Warden, Md. House of Correction, 64 F.3d 951, 955 (4th Cir. 1995) (en banc) (cause of action under § 1983 accrues and the statute of limitations begins running "when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action").

Plaintiff claims that the statute of limitations for his § 1983 cause of action did not begin to run until his habeas claim became moot, upon his release from prison. As support for this proposition, the Plaintiff points again to Justice Souter's concurrence in Heck. Justice Souter attempted to draw an exception to the habeas requirement in the majority opinion in Heck for those prisoners who were *prevented*, by the passage of time or the difficulty in uncovering evidence, from filing a habeas petition. Heck, 512 U.S. at 500; 114 S. Ct. at 2379 (Souter, J., concurring) (citing as examples of those who would be protected by his exception "people who were merely fined . . . or who have completed short terms of imprisonment, probation, or parole, or who discovery (*through no fault of their own*) a constitutional violation after full expiration of their sentences") (emphasis added). In other words, if a prisoner is unable, through no fault of his own, to challenge his conviction through a habeas petition, he should be given the chance to do so under § 1983.

However, the exception introduced by Justice Souter cannot be read to apply to any inmate "no longer in custody," regardless of whether the inmate attempted or had the opportunity to litigate a habeas petition. If this broad construction of Justice Souter's exception were the law, an inmate could simply choose not to file a habeas petition challenging his disciplinary conviction, deciding instead to wait until he is released from prison. When released, the inmate would be free to file a § 1983 claim and would have two years form the date of release to do so. Such an understanding of Justice Souter's exception would completely drown out the Supreme Court's majority opinion in Heck, as every inmate, no matter the inmate's sentence or the inmate's ability to litigate his habeas petition while incarcerated, would effectively have the choice of habeas or § 1983 relief in challenging a conviction.[5]

As the above discussion shows, Justice Souter's exception is limited, protecting only those inmates who are unable, through no fault of their own, to litigate a habeas petition to its conclusion. Thus, even assuming that Justice Souter's exception is part of the controlling law, it is necessary to interpret the statute of limitations for § 1983 claims in a manner that would provide a remedy for an innocent inmate to challenge a disciplinary conviction but would prevent inmates from sitting on their claims in order

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[5] Take, for example, a prisoner who loses thirty days of good conduct time in the middle of a twenty-year sentence. If it is possible for prisoners to file a § 1983 claim when they are released from prison, and the statute of limitations for such a claim does not begin to run until the prisoner is released, the inmate could wait ten years until he released and then file a claim under § 1983. The prisoner would not have to invalidate the disciplinary conviction through habeas even though he has ample time to do so, and he would effectively be exempted from the ordinary statute of limitations and exhaustion requirements that apply to federal habeas petitioners. See 28 U.S.C. § 2254(b)&(d).

to avoid having to file a habeas petition. The interpretation of the statute of limitations for § 1983 claims that best reconciles these competing interests is one that starts the statute running from the moment that an inmate's disciplinary conviction is final, excluding the time that an inmate spends litigating a habeas petition. Such an approach would force inmates to comply with the majority opinion in Heck by filing a habeas petition, or risk losing the ability to file a lawsuit under § 1983 when they are released form prison due to the running of the statute of limitations.[6] However, those inmates who attempted to litigate their habeas petitions promptly after their disciplinary convictions will still have a remedy under § 1983 if their petitions are mooted by their release from prison.[7]

Applying this equitable approach to the Plaintiff's case, it is apparent that the Plaintiff would fall into the category of inmates who sat on their rights and are therefore prohibited by the statute of limitations from filing a § 1983 claim after their release from prison. The Plaintiff's final appeal of his loss of good conduct time was denied on August 20, 1997. Almost ten months had passed by the time the plaintiff filed a state habeas petition on June 18,

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[6] The hypothetical inmate who loses thirty days of good conduct time in the middle of a twenty-year sentence would not be allowed to sit on his claim for ten years until his release from prison, as the two-year statute of limitations would bar him from filing a claim under § 1983.

[7] Assume an inmate loses good conduct time when he has only two years left on his sentence. The inmate immediately files a habeas petition, but the state court dies ont rule on the petition and it is dismissed as moot when the inmate is released from prison. If the time spent litigating the habeas petition is excluded for purposes of calculating the § 1983 statute of limitations under Justice Souter's exception in Heck, the Plaintiff would be free to challenge his conviction under § 1983.

1999. The Plaintiff's habeas petition was then dismissed on July 25, 2001. Another year and five months had passed before the Plaintiff filed his § 1983 claim on December 20, 2002. Thus, even tolling the statute of limitations for those dates that the Plaintiff's habeas petition was pending is state court, the Plaintiff filed his complaint more than two years and two months after his disciplinary conviction became final. The Plaintiff's § 1983 claim is therefore barred by the two-year statute of limitations for such claims. See Shelton, 148 F. Supp.2d at 677.

Plaintiff has filed his complaint under § 1983 rather than filing a habeas corpus petition in an attempt to circumvent the habeas statute of limitations and the exhaustion requirements of 28 U.S.C. § 2254. Plaintiff had a fair opportunity to litigate his claim within the appropriate statute of limitations but failed to do so. As a result, the Plaintiff's claim under § 1983 is DISMISSED with prejudice.

ENTER: This 21st day of July, 2003.

/s/ James C. Turk
Senior United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

HAROLD E. ANDERSON	)	
	)	
Plaintiff,	)	Civil Action No.
	)	7:02CV01292
v.	)	AMENDED FINAL
	)	ORDER
EDDIE L. PEARSON, et al.,	)	By: Hon. James C.
	)	Turk, Senior United
Defendant(s).	)	States District Judge

This matter is before the Court on the Defendants' Motion to Dismiss. The parties have briefed the motion and agreed to dispense with oral argument. In accordance with the Court's previously issued July 21, 2003 Memorandum Opinion, it is hereby

ADJUDGED AND ORDERED

that

1) Defendants' Motion to Dismiss is **GRANTED**;

2) Plaintiff's federal claim is **DISMISSED** with prejudice; and

3) the Court declines to exercise supplemental jurisdiction over the Plaintiff's state law claim, which is **DISMISSED** without prejudice.

The clerk of the Court is directed to strike this case form the active docket of the Court and to send copies of

this order to Plaintiff and to counsel of record for the Defendants.

ENTER: This 29th day of July, 2003.

/s/ James C. Turk
Senior United States District Court Judge